

United States District Court
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

UNITED STATES OF AMERICA

§

VS.

§

§

CRIM NO. 4:16CR4

§

APPEAL NO. 16-41166

HEATHER ELIZABETH MERCADO

§

MEMORANDUM OPINION AND ORDER

On July 19, 2016, the Judgment was entered. The final day for filing a timely notice of appeal was August 2, 2016. Defendant, *pro se*, filed a notice of appeal on August 12, 2016. On December 8, 2016, the Fifth Circuit remanded the case for a determination of whether excusable neglect or good cause existed for the untimely filing of the Defendant's notice of appeal.

Rule 4(b)(1) of the Federal Rules of Appellate Procedure affords a criminal defendant fourteen (14) days in which to file a notice of appeal. Pursuant to Rule 4(b)(4) of the Federal Rules of Appellate Procedure, a district court may grant an additional thirty (30) days in which to file a notice of appeal upon a finding of excusable neglect or good cause. Since Defendant filed her notice of appeal within the additional thirty (30) day period, the Fifth Circuit remanded the case to this Court on December 8, 2016, for a determination of whether the untimely filing of the notice of appeal was due to excusable neglect or good cause. This Court subsequently entered an Order on December 16, 2016, directing Defendant to file an affidavit with the Court by January 3, 2017, explaining whether the untimely filing of her notice of appeal was due to excusable neglect or good cause. The Court also ordered Defendant's counsel of record to file a report with the Court explaining his knowledge of this matter.

On December 29, 2016, counsel of record filed a report indicating that counsel discussed Defendant's rights to appeal, that she was fully aware of her rights and the time line associated with any appeal, and at no time did Defendant indicate that she wanted to appeal. Counsel also noted that Defendant never asked for assistance in filing an appeal and the first time counsel became aware of the appeal was when he received notice from the Fifth Circuit that an untimely appeal had been filed pro se. Although Defendant received the Court's order on December 22, 2016, Defendant did not file an affidavit explaining how the late notice of appeal was due to excusable neglect or good cause. The Court finds that the untimely filing of her notice of appeal was not due to excusable neglect or good cause.

The Clerk is **ORDERED** to forward a copy of this memorandum to the Court of Appeals and to the parties in this case.

SIGNED this 9th day of January, 2017.


AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE